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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-108

VINCENT DiNAPOLI,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner Vincent DiNapoli prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in this proceeding on June 20, 1977.

Opinion Below

The opinion of the Court of Appeals for the Second Circuit, not yet reported, appears in the Appendix.

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on June 20, 1977. This petition for certiorari is being filed within 30 days of that date. This Court's jurisdiction is invoked under 28 USC Section 1254 (1).

Questions Presented

1. Does Federal Rule of Evidence 613(b) require that a proper foundation be laid *before* extrinsic evidence of bias may be introduced?

2. Does a certificate of relief from disabilities issued under New York Correction Law Sections 700 *et seq* with respect to a certain criminal conviction make evidence of that conviction not admissible under Federal Rule of Evidence 609(c)?

Federal Rules of Evidence Involved

Rule 613. Prior Statement of Witnesses.

• • •

(b) Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require . . .

Rule 609. Impeachment by evidence of conviction of crime.

• • •

(c) Effect of pardon, annulment or certificate of rehabilitation. Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted . . .

New York Correction Law Involved

§701. Certificate of relief from disabilities.

1. A certificate of relief from disabilities may be granted as provided in this article to relieve a first offender of any forfeiture or disability, or to remove any bar to his employment, automatically imposed by law by reason of his conviction of the crime or of the offense specified therein . . .

§702. Certificates issued by courts.

1. Any court of this state may, in its discretion, issue a certificate of relief from disabilities to a first offender for a conviction that occurred in such court . . . Such certificate may be issued (i) at the time sentence is pronounced, in which case it may grant relief from forfeitures, as well as from disabilities, or (ii) at any time thereafter in which case it shall apply only to disabilities.

2. Such certificate shall not be issued by the court unless the court is satisfied that:

(a) The person to whom it is to be granted is a first offender, as defined in section seven hundred;

(b) The relief to be granted by the certificate is consistent with the rehabilitation of the first offender; and

(c) The relief to be granted by the certificate is consistent with the public interest.

3. Where a certificate of relief from disabilities is not issued at the time sentence is pronounced it shall only be issued thereafter upon verified application to the court. The court may, for the purpose of determining whether such certificate shall be issued, request its probation service to conduct an investigation of the applicant, or if the court has no probation service it may request the probation service of the county court for the county in which the court is located to conduct such investigation, or if there be no such probation service the court may request the director of the division of probation in the state department of correction to arrange for such investigation.

Statement of the Case

Petitioner DiNapoli was convicted in the United States District Court for the Eastern District of New York after a jury trial before Mark A. Costantino, District Judge, on one count of violating 18 USC Section 224—conspiring to influence by bribery the outcome of horse races at Pocono Downs, Pennsylvania (393a-394a)*.

He was sentenced to a term of three years to be served by three months of weekend imprisonment and the balance on probation, and to pay a fine of $1,000.00 (393a-394a).

The crime involved here, allegedly committed in 1970, was brought to the attention of the authorities in 1975 by Salvatore Montello (51a). Montello had spent his life in crime (58a-63a, 125a-128a). In 1975, while serving a 7½ year sentence for burglary at Lewisburg Prison, he escaped (62a-63a). When finally recaptured, he started to "cooperate" with the authorities (63a-64a). The result was the case at bar.

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* The reference is to pages of the Joint Appendix filed in the Court of Appeals for the Second Circuit.

The government's case was based on Montello's testimony. He was an unindicted co-conspirator. His testimony was critical to the government's case. The prosecutor conceded that this case involved the testimony of "an accuser, Salvatore Montello, against the accused, Mr. DiNapoli" (305a).

The trial judge's preliminary remarks to the jury discussed the motives of witnesses (46a).

The government's opening statement discussed Montello's motive for testifying (51a-53a). During the government's case it questioned Montello as to his motive for testifying. He answered, "They tried to kill me" in the Federal House of Detention on West Street (64a) and that he "agreed to cooperate with the government" "[o]n account of what happened to me in West Street" (64a-65a). That agreement entailed "[i]mmunity for my cooperation" (68a).

On petitioner's case, the defense called Helene Montello, the accuser's wife, as a witness (338a), and sought to examine her concerning visits to her husband while he was confined at Lewisburg (340a). The court upheld the government's objection to this line of questioning as irrelevant (341a). Petitioner then offered to prove by this witness and by Debby Scarpadi, Mrs. Montello's daughter (339a), that Montello, after having escaped from prison and well before any agreement with the government, told his wife in the presence of others that he would never go back to prison and, if necessary, would frame people to stay out of prison (342a, 358a); and that, while a fugitive from Lewisburg Prison, Montello called DiNapoli for help and was refused, whereupon Montello said, "I will get that fat bastard" (347a, 353a).

The court excluded the proffered testimony on the ground that the matter had not been brought to Montello's attention during his cross-examination (344a *et seq*).

Thereupon, defense counsel asked to recall Montello in order to supply this lack (346a). The court refused the request (353a, 354a). Defense counsel repeated his request to recall Montello, saying that he did not know where to subpoena him (354a-355a). Montello was being kept hidden by the government under the Witness Protection Act, 84 Stat. 933. Again the court refused (355a).

Finally, for the third time, defense counsel asked for the recall of Montello (357a) and again the court refused, despite the governments consent to make Montello "available to the defendants" (358a).

In summation, the government took advantage of the fact that appellant had been prevented from informing the jury that Montello had said that he would frame people if necessary to stay out of jail and would "get that fat bastard". The United States Attorney argued to the jury, "There has not been shown nor does there exist motives for (Montello and Davis) to lie from that stand (363a).

Petitioner did not testify in his own defense. He was effectively prevented from doing so by the trial court's ruling that petitioner's past conviction of a violation of New York Penal Law §105.50, Conspiracy in the 3rd degree, a class A misdemeanor, was admissible to attack his credibility.

Petitioner contends that this was error because the certificate of relief from disabilities issued to petitioner under New York Correction Law §702 is within the class of exculpatory instruments described in Federal Rules of Evidence 609(c).

The Court of Appeals affirmed.

Reasons for Granting the Writ

Petitioner contends that he was denied a fair trial in that (a) the trial court prevented him from exposing to the jury his accuser's malignant motives; and (b) the trial court prevented him from testifying in his own defense by holding that a past misdemeanor conviction was admissible to attack his credibility despite the certificate of relief from disabilities issued to him.

I.

This is a case of accuser against accused. The government's case tendered the issue of the accuser's motive to testify. On petitioner's cases, the trial court prevented him from introducing extrinsic evidence of the accuser's hostility because, in the court's view, petitioner had failed to lay a proper foundation by cross-examining the accuser during the government's case with respect to the extrinsic material.

The Court of Appeals affirmed this exclusion of extrinsic evidence of a prior statement showing bias, holding that exclusion was required by Federal Rules of Evidence 613(b). It quoted *United States* v. *Harvey,* 547 F 2d 720, 722 (2 Cir. 1976):

> ". . . Prior to the proffer of extrinsic evidence, a witness must be provided an opportunity to explain the circumstances suggesting bias."

This interpretation by the Second Circuit of Federal Rules of Evidence 613(b) conflicts with that adopted by the First Circuit in *United States* v. *Barrett,* 539 F 2d 244 (1 Cir. 1976), where the court said (539 F 2d at 255-256):

> "The foregoing indicates that while good practice still calls for the laying of a foundation, one is not absolutely required."

This conflict justifies the grant of certiorari to review the judgment below, particularly where, as here, the interpretation complained of affected petitioner's due process rights.

> "The exposure of a witness' motivation in testifying is so significant that in a criminal case a curtailment of this right may amount to a denial of confrontation (*Davis* v. *Alaska*, 415 US 308) or due process (*Giglio* v. *US*, 405 US 150) rights." 3 Weinstein's Evidence, pp. 607-18.

In *United States* v. *Blackwood*, 456 F 2d 526, 530 (2 Cir. 1972), the court said:

> ". . . A defendant's major weapon when faced with the inculpatory testimony of an accusing witness often is to discredit such testimony by proof of bias or motive to falsify."

Petitioner was denied the use of that weapon. He was thus denied a fair trial. *Alford* v. *U.S.*, 282 US 687, 692, 694 (1931). The error affected "substantial rights" F.R. Cr. P. 52; *Kotteakos* v. *U.S.*, 328 US 750, 764-765.

II.

The trial court effectively prevented petitioner from testifying in his own defense by holding that a previous misdemeanor conviction was admissible to attack his credibility.

Federal Rules of Evidence 609(c) provides that evidence of a conviction "is not admissible under this rule if (1) the conviction has been the subject of a . . . certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted . . ." Petitioner contends that the certificate of relief from disabilities issued to him by the Supreme Court of the State of New York was within the class of exculpatory instruments, to wit, a "certificate of rehabilitation, *or other equivalent procedure*" described in Federal Rules of Evidence 609(c).

When a Justice of the Supreme Court of the State of New York decides to exercise his discretion under Correction Law §702(1), he must make certain findings. This is mandated by the clause "Such certificate shall not be issued" etc. (N. Y. Correction Law §702(2). The following phrase, "unless the court is satisfied", is the equivalent of the phrase in Federal Rules of Evidence 609(c), "based on a finding". The provision of Federal Rule of Evidence 609(c) for "other equivalent procedure based on a finding of the rehabilitation of the person convicted" is met by the necessity for a finding under N. Y. Correction Law §702(2)(b) that "The relief to be granted by the certificate is consistent with the rehabilitation of the first offender."*

We urge that the trial court's ruling—that the certificate of relief from disabilities here was not "a certificate of rehabilitation, or other equivalent procedure"—was unduly restrictive of the intention of Federal Rules of Evidence 609(c). This rule favors letting the jury hear a defend-

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* In this connection, it is noteworthy that N. Y. Laws 1976, c. 931 §5, effective January 1, 1977, added N. Y. Correction Law §753(2) which provides that a certificate of relief from disabilities "shall create a presumption of rehabilitation in regard to the offense or offenses specified therein."

ant's story without incurring the prejudice likely to ensue from disclosing past convictions, a principle urged in the past (McCormick, Evidence §43 at 94 [1954]) and first adopted in *Luck* v. *United States*, 348 F 2d 763, (D.C. Cir. 1965). This objective is emphasized by Federal Rules of Evidence 102 that "[t]hese rules shall be construed . . . to the end that the truth may be ascertained and proceedings justly determined."

The trial court's negative ruling had far-reaching effect. It prevented petitioner from testifying in his own defense; it also prevented him from calling character witnesses since, under Federal Rules of Evidence 608(b), the trial court in its discretion may have permitted the prosecution to question such witnesses as to petitioner's past convictions as bearing on his reputation for truthfulness.

In sum, the trial court's ruling erred in its interpretation of Rule 609(c) to petitioner's prejudice. It unfairly restricted petitioner in presenting his defense; it deprived him of due process rights.

CONCLUSION

Petitioner did not get a fair trial.

The trial court refused to grant a mistrial when the prosecutor had the accuser testify that someone had tried to kill him while he was held at the West Street jail (63a-66a). It refused to grant a mistrial when the prosecutor appealed to anti-Italian prejudice by asking the accuser's brother, a defense witness, whether he vehemently disliked the accuser "because he broke the honor code among the Italians and he is co-operating with the Government" (325a).

Petitioner was prevented from letting the jury know of Montello's bias and hostility toward petitioner and the prosecutor thereupon argued in summation that there was none (363a, 390a).

Finally petitioner was effectively prevented from testifying in his own defense and even from calling character witnesses by the trial court's refusal to accept the New York State certificate of relief from disabilities as a "certificate of rehabilitation, or other equivalent procedure".

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Second Circuit.

Dated: New York, New York
July 19, 1977

Respectfully submitted,

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APPENDIX

Opinion of the United States Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 1132—September Term, 1976.

(Argued May 18, 1977 Decided June 20, 1977.)

Docket No. 77-1052

UNITED STATES OF AMERICA,

Appellee,

—against—

VINCENT DiNAPOLI,

Appellant.

Before:

MOORE, SMITH and MULLIGAN,

Circuit Judges.

Appeal from a judgment of conviction entered in the United States District Court for the Eastern District of New York after a jury trial before Mark A. Costantino, *Judge,* on one count of violating 18 U.S.C. § 224.

Affirmed.

DOUGLAS K. MANSFIELD, Assistant United States Attorney (David G. Trager, United States Attorney for the Eastern District of New York, Bernard J. Fried, Gary A. Woodfield, Asst. United States Attorneys, of counsel, *for Appellee*

HAROLD DUBLIRER, New York, New York (Dublirer, Haydon & Straci, New York, New York), *for Appellant*

MULLIGAN, *Circuit Judge*:

This is an appeal by Vincent DiNapoli from a judgment of conviction entered against him in the United States District Court for the Eastern District of New York on January 14, 1977 after a jury trial before Judge Mark A. Costantino. DiNapoli was convicted of conspiring to influence unlawfully by bribery the outcome of horse races at Pocono Downs, Pennsylvania in violation of 18 U.S.C. § 224. He was sentenced to a term of three years to be served by three months of weekend imprisonment and the balance on probation. He was also fined $1,000.

The testimony on trial established that DiNapoli and James Santamaria met at the Long Island home of Salvatore Montello to confirm a plan to fix races with the connivance of crooked jockeys at Pocono Downs. DiNapoli agreed to advance $5,000 to finance the venture. For four successive days from October 14 through 17, 1970 meetings took place in Montello's hotel room in Wilkes Barre to fix each evening's "Big Exacta" races. This type of wager required the bettor to have the prescience to predict the first and second (win and place) horses in the seventh and eighth races for the evening. The conspira-

tors determined the favorites in these races and then bribed the jockeys $200 to $500 apiece to ensure that their mounts did not run as fast as the experts and the spectators at the sporting event anticipated. The conspirators attended the track each evening and purchased all possible combinations of the Big Exacta excluding the favorites whose jockeys were bribed. Thus the conspirators had arranged matters not only so they could not lose but also so longshot winners would produce a generous payoff.[1] The conspirators naturally won on all four nights, cashing tickets through associates, one of whom was appellant's father, for each night in the sums of $28,090.90, $5,691.80, $8,504.20 and $48,536.60 in succession.

The evidence against DiNapoli was overwhelming. Salvatore Montello was the government's principal witness and related the entire plan, the daily meetings, the bribes and the splitting of the spoils. In addition, two jockeys testified to DiNapoli's presence in the hotel room and participation in the discussion of the amount of their payment. DiNapoli, according to the testimony of one jockey, had complained on one occasion that the amount being paid to a jockey was too high. The testimony of the jockeys was largely uncontradicted.

The defendant called as witnesses the defendant's father, a Roman Catholic priest and the brother and the wife of the government witness Salvatore Montello. The defense wished to introduce testimony through Montello's wife that Montello, who had a criminal record and was being protected under the Federal Witness Protection

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[1] There is no indication at all and no charge by the government that the horses involved had any knowledge of, much less participated except unwittingly in the shenanigans involved.

Program, was in fact biased against DiNapoli and would frame people to stay out of jail. Judge Costantino refused to permit Montello's wife to testify as to her husband's bias against the appellant because the defense, which had cross-examined Montello for almost a full day, had not laid a foundation for the introduction of such evidence by bringing the matter of his alleged hostility toward the appellant to Montello's attention. On cross-examination Montello had stated that the only reason he decided to cooperate with the government was that attempts had been made on his life. Not only did counsel for DiNapoli have ample opportunity to examine Montello on this issue but, then knowing what Montello's wife's testimony as his witness would be, he had an excellent opportunity for laying a foundation for her testimony on this point. The ruling of the trial judge refusing to permit extrinsic evidence of a prior statement showing bias when the witness was not afforded an opportunity to explain or deny the statement is in accord with Fed. R. Evid. 613(b)[2] and is clearly the law of the circuit.

In *United States* v. *Harvey,* 547 F.2d 720, 722 (2d Cir. 1976) we said:

> This Circuit follows the rule, applicable in a number of other Circuits, that a proper foundation must be laid before extrinsic evidence of bias may be introduced. Prior to the proffer of extrinsic evidence, a witness must be provided an opportunity to explain the circumstances suggesting bias.

(Citations omitted.) See Advisory Committee Note to Rule 613(b). The only issue remaining then is whether the district court abused its discretion in not recalling Montello to the stand in order to lay a proper foundation. It is basic of course that the trial court has the discretion to determine exceptions to the normal order of proof. Fed. R. Evid. 611(a); 6 Wigmore, Evidence § 1867 (rev. ed. 1976). We see no abuse here. While appellant urges that the record establishes that counsel made such request, the trial judge in rejecting appellant's motion for a new trial on this very issue considered that he had merely refused to disclose the whereabouts of the protected witness. The record in print does not contradict the trial judge. In any event, it is clear that DiNapoli's counsel had every opportunity initially to lay a proper foundation and, despite his knowledge of the forthcoming testimony of Mrs. Montello, nonetheless inexplicably failed to raise the issue at what was unquestionably the proper time. Moreover, even assuming error on this point, it was harmless. The two jockeys who testified abundantly established that DiNapoli was not at Pocono Downs simply to enjoy the Sport of Kings. He was directly implicated in a crude but effective scheme to corrupt jockeys, was present and participated in their bribery and shared in the resulting loot.

The appellant also urges that the trial court erred in declining to exclude the use for impeachment of his prior state conviction. DeNapoli was convicted in February

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[2] Fed. R. Evid. 613(b) provides:

> Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

1972 in a New York State court of conspiracy in the third degree in violation of N.Y. Penal Law § 105.05, a class A misdemeanor.[3] On March 20, 1972 a judge of the New York Supreme Court issued to appellant a certificate of relief from disabilities pursuant to N.Y. Correction Law § 702. Appellant has argued both below and before this court that evidence of this conviction was not admissible because of Fed. R. Evid. 609(c). That rule provides:

> Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

The trial court ruled that the New York certificate of relief from disabilities issued to the defendant was not a certificate based on a finding either of defendant's rehabilitation or innocence and therefore was outside the scope of Rule 609(c). We agree.

On its face, the certificate here does not disclose the reasons for its issuance. Defendant never submitted to

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[3] By post-argument letter counsel for appellant raises for the first time that Rule 609(a) prohibits the use of a misdemeanor for impeachment purposes. Since this ground for excluding evidence of the conviction was never presented to the trial court, we will not consider it on appeal. *United States* v. *Braunig*, slip. op. 2773, 2779 (2d Cir. Apr. 11, 1977).

the district court any finding of the state court on his innocence or his rehabilitation. Appellant argues that the statute provides for the issuance of a certificate only upon a finding of rehabilitation. He relies on Correction Law § 702.2(b) which provides that a certificate should not issue unless "[t]he relief to be granted by the certificate is consistent with the rehabilitation of the first offender . . . ." However, the proper construction of this requirement is that the certificate should be issued when it will be an aid to rehabilitation. It does not require, as appellant contends, a determination that the convict has already been rehabilitated. Governor's Memorandum Approval of L.1966, c.654 in McKinney's 1966 Session Laws of New York 3003. See also the discussion of the New York statute in both the majority and the dissenting opinions in *Rehman* v. *I.N.S.*, 544 F.2d 71 (2d Cir. 1976), noted in 45 Fordham L. Rev. 1247 (1977). A New York court has held that, "The granting of a certificate of relief from disabilities in no way eradicates or expunges the underlying conviction." *Da Grossa* v. *Goodman*, 72 Misc. 2d 806, 339 N.Y.S.2d 504, 505 (S.Ct. 1972). In light of this, the advisory committee's note on Rule 609(c) is instructive, "A pardon or its equivalent granted solely for the purpose of restoring civil rights lost by virtue of a conviction has no relevance to an inquiry into character." Thus it is clear and we hold that the certificate of disabilities issued pursuant to N.Y. Correction Law §§ 700 *et seq.* is outside the scope of Fed. R. Evid. 609(c).

We find appellant's assertion that he was entitled to a hearing on the question of pre-indictment delay to be meritless. See *United States* v. *Lovasco*, 45 U.S.L.W. 4627 (U.S. June 9, 1977). The alleged prosecutorial misconduct finds no support in the record.

The judgment of conviction is therefore affirmed.

Judgment of the United States Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twentieth day of June one thousand nine hundred and seventy seven.

Present:

HON. LEONARD P. MOORE,
HON. J. JOSEPH SMITH,
HON. WILLIAM H. MULLIGAN,
Circuit Judges.

77-1052

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

VINCENT "VINNIE" DINAPOLI, JAMES "JIMMY" SANTAMARIA, EDWARD "EDDIE" FEDER, JIMMY DAVID, DONALD LAUCIRICA, CLINT FROMAL, RICHARD "RICHIE" SURRENCY,

Defendants,

VINCENT "VINNIE" DINAPOLI,

Defendant-Appellant.

Judgment of the United States Court of Appeals for the Second Circuit

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed in accordance with the opinion of this court.

A. DANIEL FUSARO
Clerk

By: ARTHUR HELLER
Deputy Clerk

Judgment of the United States District Court for the Eastern District of New York

(Filed—January 17, 1977)

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK

DOCKET No. 75 CR 741

UNITED STATES OF AMERICA,

vs.

VINCENT DiNAPOLI,

Defendant.

In the presence of the attorney for the government the defendant appeared in person on this date—Month 1 Day 14 Year 1977.

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

With counsel.

Name of counsel—Paul Victor, Esq.

There being a finding/verdict of—Guilty.

Judgment of the United States District Court for the Eastern District of New York

Finding and Judgment:

Defendant has been convicted as charged of the offense(s) of violating Title 18, U.S.C. Sec. 224, in that on or about and between Oct. 12th and Oct. 17th, 1970, both dates being approximate and inclusive, the defendant with others, did knowing and wilfully conspire together to carry into effect a scheme in commerce to influence by bribery, sporting contests, to wit: to influence the outcome of horse races at Pocono Downs, Pa., with knowledge that the purpose of such scheme was to influence by bribery the aforesaid sporting contests. It was part of said conspiracy that the defendant with others would bribe jockeys of various "Exacta" races, which affected the outcome of said races.

Sentence or Probation Order:

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 3 years. Defendant to serve 3 months of weekends from Friday at 8:00 P.M. to Sunday at 8:00 P.M.—balance of sentence on probation and to pay a fine of $1,000.00. Execution of sentence stayed pending appeal.

MARK A. CONSTANTINO
United States District Judge

Date 1-14-77